

REMARKS

Claims 1 through 17 are pending in this Application, of which claims 6 through 17 stand withdrawn from consideration pursuant to the provisions of 37 C.F.R. § 1.142(b). Accordingly, claims 1 through 5 are active.

Claim 1 has been amended. Care has been exercised to avoid the introduction of new matter. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, Figs. 2A-2F and the related discussion thereof in the written description of the specification. Applicants submit that the present Amendment does not generate any new matter issue.

Claims 1 through 5 were rejected under 35 U.S.C. § 103 for obviousness predicated upon Parikh in view of Gates et al.

In the statement of the rejection the Examiner again relied upon Fig. 4 of Parikh and concluded that one having ordinary skill in the art would have been motivated to modify Parikh's device by employing an etching stopper with a dielectric constant larger than that of the first and second dielectric films. This rejection is traversed.

There is a substantial difference between the semiconductor device defined in independent claim 1 on the one hand and the devices disclosed in the applied prior art on the other hand that undermine the obviousness conclusion under 35 U.S.C. § 103. This is because even if the applied references are combined as suggested by the Examiner, the claimed invention would not result. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988).

Specifically, claim 1 has been clarified by reciting that "... the bottom of the trench formed in the second dielectric film is located under the under surface level of the etching stopper and is located inside the first dielectric film." No such structure is disclosed or suggested by the applied prior art, notably Parikh. Indeed, adverting to Fig. 4 of Parikh, it should be apparent that the bottom of line 450 is flush with the bottom of dielectric layer 416.

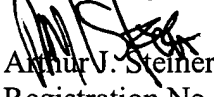
Given this fundamental difference between the claimed semiconductor device and Parikh's device, it should be apparent that even if the Examiner's proposed modification in view of Gates et al. is implemented, and Applicants do not agree that the requisite fact-based motivation has been established, the claimed invention would not result. *Uniroyal, Inc. v. Rudkin-Wiley Corp., supra.*

Applicants, therefore, submit that the imposed rejection of claims 1 through 5 under 35 U.S.C. § 103 for obviousness predicated upon Parikh in view of Gates et al. is not factually or legally viable and, hence, solicit withdrawal thereof.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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